Neutral Citation Number: [2023] EWCA Crim 1327

IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202300725/A4

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday, 5 October 2023

Before:

LORD JUSTICE EDIS
MRS JUSTICE STACEY DBE
HIS HONOUR JUDGE LEONARD KC
(Sitting as a Judge of the CACD)

REX
V
PAUL ARTHUR KING

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR R ELLIOTT appeared on behalf of the Applicant

J U D G M E N T
(Draft for Approval)

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. No matter relating to a sexual offence that has been committed against a person shall, during that person's lifetime, be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence. This prohibition applies unless waived or lifted in accordance with s.3 of the Act. It has not been waived or lifted.

2. MRS JUSTICE STACEY: On 7 November 2022 in the Crown Court at St. Albans, the applicant, then aged 63, was given permission to change his plea and pleaded guilty to two offences: attempted buggery of a male under 18 without consent, contrary to section 1(1) of the Criminal Attempts Act 1981 and section 12(1) of the Sexual Offences Act 1956 and indecent assault on a male person, contrary to section 15(1) of the Sexual Offences Act 1956. A further count on the indictment of buggery was not proceeded with and was ordered to lie on the file.

3. On 8 February 2023 he was sentenced by His Honour Judge Roques to eight years' imprisonment for both offences, each to be served concurrently with the other. The applicant renews his application for leave to appeal against sentence following refusal by the single judge.

4. The relevant facts are as follows. On 10 February 1983 the 16-year-old complainant was on his way home crossing Fairlands Valley Park in Stevenage, Hertfordshire somewhere between 9.00 and 10.00 pm. He often took this route with friends but on this occasion was alone. He was approached by the applicant, then aged 23, who was pushing a bicycle who asked him for the time and appeared to continue on his way after the complainant had replied. The applicant then suddenly turned back, grabbed the complainant from behind, took hold of him around the chest. He used both of his arms to pin the complainant's arms to his side so that he was unable to push the applicant's arms

away. He made the complainant undo his belt and drop his trousers and underwear and he touched the complainant's penis and testicles. He forced the complainant to lean forward and attempted to penetrate his anus with his penis. The applicant then spun the complainant around, pushed him to his knees and with his right arm and hand around the complainant's neck very forcefully pushed his penis inside the complainant's mouth. The applicant was too strong for the complainant to be able to resist. The applicant pushed the complainant's head back and forwards until he ejaculated in the complainant's mouth. As soon as ejaculation had taken place the applicant fled, leaving the complainant on the ground.

5. The complainant ran home and told his father and two of his brothers that he had been attacked and they went to the police. Swabs were taken that revealed seminal staining, but no suspect was identified at that stage.

6. Following a cold case review and further forensic and DNA analysis the applicant was identified and arrested on 7 June 2021. He denied the offences until the week before trial.

7. In careful sentencing remarks the judge identified that at the time of these offences the applicant was of good character but noted that in the following decade he had committed a number of similar sex offences: indecent assault in 1984, when a further offence was taken into account, and two offences of buggery in 1991 for which the applicant received a custodial sentence of four years in 1992.

8. The judge noted that within the maximum available sentence at the time the applicant fell to be sentenced having measured regard to the current sentencing regime. The judge meticulously followed the approach to sentencing historical sex offences. He noted that if the offences had occurred today they would be attempted rape and rape for which the

maximum sentence would be life. He was well aware that at the time the offences were committed the maximum sentence available was 10 years since it had been the judge who had alerted counsel the day before, in order to correct an error on the prosecution's sentencing note.

9. The impact of the offences on the complainant were devastating at the time and have continued to have a life-long effect on his mental health and ability to form lasting relationships amounting to severe psychological harm. The offences fell within Category 2 Harm and Level B culpability under the current guidelines which would give a sentencing range of between seven to nine years, with a starting point of eight years. There is no criticism of that assessment.

10. The judge then considered aggravating and mitigating features. He identified four significant aggravating features: the timing, the location, the age of the complainant and the very severe psychological harm which had blighted his life for 40 years because of these offences. They would have resulted in a significant uplift from the starting point of eight years. Set against the aggravating features, the judge noted that the applicant was a young man of 23 at the time the offences were committed, he now had stage 3 chronic obstructive pulmonary disorder and poor health which may make his time in custody more onerous. He acknowledged that the applicant had committed no further offences after 1991 and had glowing character references. However, that was to be balanced against the fact of the decade of offending after these offences were committed which culminated in his imprisonment in 1992, meaning that the passage of time was neither an aggravating nor a mitigating feature.

11. He concluded the applicant was not dangerous and that the lowest determinate sentence after trial would have been nine years for each offence, having taken into account the

mitigation. The indication of a guilty plea one week before the trial date entitled the applicant to little more than a 10 per cent discount, resulting in an eight year sentence.

12. In accordance with the totality principle, since both counts arose out of the same incident the sentences were ordered to be served concurrently.

13. There are three grounds of appeal which together are said to render the sentence manifestly excessive. First that there was no reduction in sentence for the applicant's mitigation, in particular his ill-health and remorse. Secondly, the judge did not consider the totality principle in relation to the 1999 sentencing exercise. And thirdly, there was no reduction made for the lower maximum sentence at the time of the commission of the offences.

14. Leave was refused by the single judge who considered that when the case was considered in the round, even with the benefit of the mitigation available to him and the lower maximum sentence available at the time, an overall sentence of eight years after credit for the late plea was within the scope of the judge's sentencing discretion and could not arguably be considered to be manifestly excessive.

15. This was a particularly serious rape of a boy at night in a public park and was terrifying for the young victim who has suffered and still suffers substantial trauma as a result. His victim personal statement shows both the short term and the long term effects that this has had on his life. He immediately split up with his girlfriend at the time and was unable to explain to her what had happened. He stopped going out and could not form a relationship for the next five years. He attributes his marriage breakdown after just 14 months to the trauma these offences caused him and the difficulty he has had forming lasting relationships since then. He has never been back to that part of the park since the incident, even though he still lives in the area. After he first told the police in 1983 he

has never spoken of it until the police informed him of their continuing enquiries in 2020. Since then he has been preoccupied with what occurred in 1983. He has been unable to focus or concentrate and has been off work. He has been struggling to cope and uses alcohol to block out the invasive thoughts of these offences. The judge correctly described the effect on the complainant as having a devastating impact on his mental health.

16. Against that background, the judge gave what credit he could for the applicant's mitigation and ill-health. The expressed remorse sat uneasily with the very late guilty plea and the blanket denial in the defence case statement. The seriousness of the offence is to be assessed by the culpability of the offender and the harm caused or intended. That is the main consideration of the court.

17. The judge took careful account of the mitigation, considered the facts and the seriousness of the many aggravating features and correctly identified that the continued commission of sexual offences against young men and boys from 1984 to 1991 was an aggravating feature, but that the absence of further offending thereafter and evidence of good character was a mitigating feature. The judge was entitled to conclude that the applicant’s good behaviour subsequent to his release from custody in around 1994 merely balanced out the aggravating features of his earlier like offences. The applicant was an experienced merchant seaman, neither very young nor immature when these offences were committed so as to justify a reduction for sentence on grounds of youth.

18. The criticism of the judge's failure to consider the totality principle in relation to the 1992 sentencing exercise is misplaced. The principle of totality applies when sentencing an offender for multiple offences at the same time or when sentencing an offender who is already serving an existing sentence, neither of which apply in this case. The applicant

did not admit the present offence and did not ask for these offences to be taken into consideration when he was being sentenced for the similar offences in both 1985 and 1992. Indeed, had the sentencing judge in 1985 or 1992 at those sentencing exercises known of these earlier offences it would have been treated as an aggravating feature and would have likely resulted in a longer sentence. It demonstrates the difficulty of applying a counter factual situation to cases of this type. Even with the applicant's mitigation and the lower maximum penalty applicable at the time, the seriousness of the offences and the very severe psychological impact that they have had upon the complainant justify the eight-year concurrent sentence that he imposed which was neither manifestly excessive nor wrong in principle. Leave to appeal is refused.

19. By way of postscript, we wish to clarify and confirm that since the offences were committed on 10 February 1983, before the victim surcharge order provisions came into effect on 1 October 2012, no victim surcharge was imposed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk